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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,688	12/14/2001	Robert McMillen	41575/27975	7323

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HUSCH & EPPENBERGER, LLC
190 CARONDELET PLAZA
SUITE 600
ST. LOUIS, MO 63105-3441

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,688

Applicant(s)

MCMILLEN, ROBERT

Examiner

Joseph F Edell

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the at least one guide boss and the electric motor must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 4 and 14 are objected to because of the following informalities:
- a. claim 4, line 3, "spoke" should read "spoke.";
 - b. claim 14, line 2, "an hydraulic" should read "a hydraulic".
- Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 4, 13, and 14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. On page 4, line 17 of the specification, the actuation traction is defined as a cable. However in claim 4, the traction element is defined as one of a wire, a bowden cable, a hard drawn wire, a pin, a rod, a bracket, and a spoke. Therefore, the specification does not reasonably convey to one skilled in the art the various traction elements defined in claim 4, and one skilled in the art would not be able to determine how the various traction elements function within the ergonomic support. Regarding claim 13, the communication between the extending element and the actuator is defined as one of a piston, a screw, a rocker, a rack and pinion, a cam, a lever, and a cantilever; yet the specification does not disclose any structure for communication between the extending element and the actuator. Therefore, one skilled in the art would not be able to determine from the specification the structural communication between the extending element and the actuator. Lastly, claim 14 defines the actuator as one of a hydraulic device, a pneumatic device, a bowden cable, an electric motor, and a mechanical device. On page 4, line 19 of the specification, reads that an electric motor can pull the traction means. Therefore, the specification does not reasonably convey to one skilled in the art the various actuators defined in claim 14, and one skilled in the art would not be able to determine how the various actuators function within the ergonomic support.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4 and 8-19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,106,423 to Schwarz.

Schwarz discloses an ergonomic support that includes all the limitations recited in claims 1-4 and 8-19, as best understood. Schwarz shows an ergonomic support having a housing 10 (Fig. 1) with an arcuate channel 11 (Fig. 2), an extending element 21 (Fig. 1) with a convex pressure surface end and an arcuate end supported in the channel of the housing, an actuator 16 (Fig. 1) anchored to the housing, a traction element 12 (Fig. 1) engaging the actuator and communicating with the arcuate end of the extending element, and a tapering, flexible pressure plate 31 (Fig. 4) attached to the pressure surface end of the extending element and including a horizontal medial axis. The description of the ergonomic device inherently discloses the method of distributing the pressure of a lumbar support.

7. Claims 1-4 and 8-19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,465,317 to Schwarz.

Schwarz discloses an ergonomic support that includes all the limitations recited in claims 1-4 and 8-19, as best understood. Schwarz shows an ergonomic support

having a housing 16 (Fig. 3) with an arcuate channel (see Fig. 3), an extending element 5 (Fig. 1) with a convex pressure surface end and an arcuate end supported in the channel of the housing, an actuator 40 (Fig. 3) anchored to the housing, a traction element 14 (Fig. 3) engaging the actuator and communicating with the arcuate end of the extending element, and a tapering, flexible pressure plate 4 (Fig. 1) attached to the pressure surface end of the extending element and including a horizontal medial axis. The description of the ergonomic device inherently discloses the method of distributing the pressure of a lumbar support.

8. Claims 1-4 and 8-19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,286,087 to Elton.

Elton discloses an ergonomic support that includes all the limitations recited in claims 1-4 and 8-19, as best understood. Elton shows an ergonomic support having a housing 60 (Fig. 3) with an arcuate channel 58 (Fig. 3), an extending element 52 (Fig. 3) with a convex pressure surface end and an arcuate end supported in the channel of the housing, an actuator 16 (Fig. 2) anchored to the housing, a traction element 44 (Fig. 2) engaging the actuator and communicating with the arcuate end of the extending element, and a tapering, flexible pressure plate 36 (Fig. 3) attached to the pressure surface end of the extending element and including a horizontal medial axis. The description of the ergonomic device inherently discloses the method of distributing the pressure of a lumbar support.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarz ('423).

Schwarz ('423) discloses an ergonomic support that is basically the same as that recited in claims 5-7 except that that plastic is not specified as the material with which elements are made, as recited in the claims. Although the material is not specified, modifying the material would have been obvious at the time of applicant's invention because the use of preferred materials is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the material since the applicant has not disclosed that having the specific material solves any stated problem or is for any particular purpose other and it appears that the ergonomic device would perform equally well with any well known material used in the chair art.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to ergonomic devices:

U.S. Pat. No. 3,948,558 to Obermeier et al. U.S. Pat. No. 3,973,797 to Obermeier et al.
U.S. Pat. No. 5,462,335 to Seyler U.S. Pat. No. 5,553,919 to Dennis
GB Pub. No. 2 196 530 A to Marshall JP Pat. No. 6-165718 to Inaba

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


JE
March 9, 2003


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600